

MONTANA WATER COURT

**AMENDED ORDER DIRECTING DNRC TO IDENTIFY
THE APPURTENANT LANDS OF
PRIVATE STOCK CLAIMS USED ON FEDERAL PUBLIC LANDS
- STATEWIDE -**

In response to the general objections of the United States of America filed in Basins 41D, 42B, and 42C, in 2009 the Water Court consulted with the Department of Natural Resources and Conservation (DNRC) and the United States on the issues raised in the USA objections. *See* Water Court Case 41D-3. The purpose of the consultations was to provide the Court with suggestions on general procedures to identify private lands to which water right claims on federal public lands were appurtenant. The concept of using a “base property” legal land description analysis was the primary focus of the discussions.

With respect to USDI-Bureau of Land Management (“BLM”) and USDA-Forest Service (“Forest Service”) administered lands, the United States advised that it generally defines the term “base property” to include land and basic livestock management facilities, structures, and improvements that comprise a farm or ranch operation; that a legal land description of base property does not usually include an entire ranch description; and that the trend since 2003 for the Forest Service is to describe smaller parcels of land as base property. *See* United States Response filed September 11, 2009, Water Court Case 41D-3, citing C.F.R. § 4110.2-1 (2008) and Forest Service Handbook 2209.12 (R1 Supplement).

On U. S. Fish and Wildlife Service administered lands, base property descriptions are not utilized. *See* United States Response filed September 11, 2009 pp. 2-3, Case

41D-3. However, according to the DNRC, the vast majority of private water right claims used on federal public lands involve BLM and Forest Service administered lands.

Based on these discussions, the Court concludes that identifying legal land descriptions associated with a water user's "base property" would be a practical methodology to identify most appurtenant private land descriptions. For the situations in which claims examination and claimant contact are unsuccessful or when base property descriptions are not available, the DNRC will add an issue remark and the Water Court will resolve the matter after the decree is issued if it is not addressed and resolved by objection.

Accordingly, during its claims examination process, the DNRC will identify private lands to which private stockwater claims used on BLM and Forest Service administered lands are appurtenant and generally do so in the manner outlined in the remainder of this Order.

For every private stockwater claim that includes a place of use on BLM or Forest Service administered lands, the DNRC will include an information remark on the claim abstract identifying the private land to which the water right is appurtenant ("appurtenancy remark"). To obtain this information, the DNRC will contact the claimant and request identification of the claimant's base property by asking the claimant to refer to a current federal grazing application or grazing permit. The claimant may also designate an alternative base property for inclusion in the information remark in the claimant's discretion.

The DNRC may use an abbreviated land description for the base property unless the claimant requests a specific legal land description for the base property.

When all or part of the place of use is on federal public lands, the DNRC will place an information remark in the place of use field on the claim abstract similar to the following:

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: (INSERT LAND DESCRIPTION).

If the DNRC successfully identifies and applies the appurtenancy remark to the claim abstracts in the manner outlined in this Order, it need not add a federal land place of use or ownership issue remark on the same abstracts.

If the claim examination and claimant contact is inconclusive, or private water claims identify the place of use on U. S. Fish and Wildlife Service administered lands, the DNRC shall place an issue remark on the abstract similar to the following:

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND.

This Order is prospective. The DNRC does not need to reexamine previously examined stock claims unless the examiner concludes that doing so would bring greater consistency to claims with common ownership, to claims within similar source descriptions, or can be done in an efficient and cost-effective manner; subject always to the review of the decision by the DNRC supervisory chain of command.

This order is effective immediately, and amends and supersedes the order issued by Chief Water Judge Bruce Loble on February 12, 2010.

ELECTRONICALLY SIGNED AND DATED BELOW.

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